



DEPARTMENT OF THE NAVY

BOARD FOR CORRECTION OF NAVAL RECORDS

2 NAVY ANNEX

WASHINGTON DC 20370-5100

CRS

Docket No: 3043-99

9 December 1999

[REDACTED]

Dear [REDACTED]

This is in reference to your application for correction of your naval record pursuant to the provisions of Title 10, United States Code, Section 1552.

A three-member panel of the Board for Correction of Naval Records, sitting in executive session, considered your application on 23 November 1999. Your allegations of error and injustice were reviewed in accordance with administrative regulations and procedures applicable to the proceedings of this Board. Documentary material considered by the Board consisted of your application, together with all material submitted in support thereof, your naval record and applicable statutes, regulations and policies.

After careful and conscientious consideration of the entire record, the Board found that the evidence submitted was insufficient to establish the existence of probable material error or injustice.

The Board found that you enlisted in the Marine Corps on 4 November 1968 at age 19. Prior to the offenses for which you were discharged, your record reflects that on 14 July 1969 you received nonjudicial punishment for an unauthorized absence of 71 days..

Your military record shows that on 29 December 1970 you submitted a written request for an undesirable discharge in order to avoid trial by court-martial for unauthorized absences totalling 146 days. Your record also shows that prior to submitting this request you conferred with a qualified military lawyer at which time you were advised of your rights and warned of the probable adverse consequences of accepting such a discharge. The Board found that your request was granted and, as a result of this action, you were spared the stigma of a court-martial conviction and the potential penalties of a punitive discharge and confinement at hard labor. You received an undesirable discharge on 11 January 1971. At that time you were assigned a reenlistment code of RE-4.

In its review of your application the Board carefully weighed all potentially mitigating factors, such as your youth and immaturity, limited education, your deprived background, service in Vietnam, and overall record. The Board also considered your contentions that you suffered mental anguish over your Vietnam service, that you were wounded in action, that you have been a good citizen since discharge, and that the discharge is too harsh. However, the Board found that these factors and contentions were not sufficient to warrant recharacterization of your discharge or change the reason for discharge, given your request for discharge to avoid trial for unauthorized absences totalling nearly five months. In this regard, the Board initially noted that you apparently were not wounded, since your DD Form 214 shows that you were not awarded the Purple Heart. The Board also believed that considerable clemency was extended to you when your request for discharge to avoid trial by court-martial was approved since, by this action, you escaped the possibility of confinement at hard labor and a punitive discharge. Further, the Board concluded that you received the benefit of your bargain when your request for discharge was granted and should not be permitted to change it now. The Board concluded that your discharge was proper as issued and no change is warranted.

The Board also noted that regulations require the assignment of an RE-4 reenlistment code when an individual is discharged in lieu of trial by court-martial. Since you have been treated no differently than others in your situation, the Board could not find an error or injustice in the assignment of your reenlistment code.

Accordingly, your application has been denied. The names and votes of the members of the panel will be furnished upon request.

It is regretted that the circumstances of your case are such that favorable action cannot be taken. You are entitled to have the Board reconsider its decision upon submission of new and material evidence or other matter not previously considered by the Board. In this regard, it is important to keep in mind that a presumption of regularity attaches to all official records. Consequently, when applying for a correction of an official naval record, the burden is on the applicant to demonstrate the existence of probable material error or injustice.

Sincerely,

W. DEAN PFEIFFER  
Executive Director